

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD SPRUEL, ) Case No. C08-505-JCC-JPD  
Petitioner, )  
v. )  
STATE OF WASHINGTON, ) REPORT AND RECOMMENDATION  
Respondent. )

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Petitioner Richard Spruel, proceeding *pro se*, filed a “Petition for a Writ of Mandamus Prohibition” with the United States District Court for the District of Columbia. Dkt. No. 1. Based on the rights violations alleged in the petition, the District Court for the District of Columbia determined that the request was a petition for writ of habeas corpus, and transferred the case to this Court as the district in which petitioner is incarcerated. Dkt. No. 3. Since that time, petitioner has filed two letters with this Court, Dkt. Nos. 7 and 9, aggressively asserting that the relief he seeks is not a writ of habeas corpus, but rather access to certain “legal material” containing “exculpatory evidence,” that, he contends, was confiscated from him by King County jail officers on October 4, 2007. Dkt. No. 1 at 3, 12. For the following reasons, the Court recommends that the Petition be DENIED.

The Court understands that petitioner is not currently seeking habeas relief. This means that petitioner's claim regarding confiscated property would lie, if at all, under 42

01 U.S.C. § 1983. Petitioner, however, is a “three strikes litigant” pursuant to 28 U.S.C. §  
02 1915(g). *See, e.g., Spruel v. Lehman*, C00-5246-FDB (W.D. Wash.); *Spruel v. Hoare*, C00-  
03 5110-RJB (W.D. Wash.); *Spruel v. Morgan*, C00-5046-FDB (W.D. Wash.). Absent a  
04 showing of “imminent danger of serious physical injury,” petitioner’s IFP application in a §  
05 1983 claim would be barred. 28 U.S.C. § 1915(g). To file a § 1983 complaint, petitioner  
06 would be required to pay the \$350 filing fee or fall within the imminent danger exception of 28  
07 U.S.C. § 1915(g).

08 However, even if petitioner paid the filing fee and filed a § 1983 complaint, it would  
09 likely be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P.  
10 12(b)(6). A prisoner who alleges that prison officials deprived him or her of a property  
11 interest without due process cannot state a constitutional claim if the state provides an  
12 adequate post-deprivation remedy. *Joshua v. Newell*, 871 F.2d 884, 887 (9th Cir. 1989); *see also Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding that “an unauthorized intentional  
14 deprivation of property by a state employee does not constitute a violation of the procedural  
15 requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful  
16 postdeprivation remedy for the loss is available”). The Ninth Circuit has held that an adequate  
17 post-deprivation remedy for confiscated property is available in the State of Washington  
18 through, for example, the Washington State Tort Claims Act. R.C.W. § 4.92; *Newell*, 871  
19 F.2d at 887. Petitioner must therefore utilize Washington’s post-deprivation remedy in lieu of  
20 filing a civil rights claim with this Court.

21 For the above reasons, the Court recommends that petitioner’s Petition for Writ of  
22 Mandamus Prohibition be DENIED and the case DISMISSED without prejudice. As a result,  
23 petitioner’s IFP Application should be DENIED as moot. A proposed order accompanies this  
24 Report and Recommendation.

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01 DATED this 18th day of July, 2008.

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04 JAMES P. DONOHUE  
05 United States Magistrate Judge  
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